

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 2 of the Commission's)	ET Docket No. 00-258
Rules to Allocate Spectrum Below 3 GHz for)	
Mobile and Fixed Services to Support the)	
Introduction of New Advanced Wireless)	
Services, including Third Generation Wireless)	
Systems)	
)	
The Establishment of Policies and Services)	IB Docket No. 99-81
Rules for the Mobile-Satellite Service in the 2)	
GHz Band)	
)	
Amendment of the U.S. Table of Frequency)	RM-9911
Allocations to Designate the 2500-2520/2670-)	
2690 MHz Frequency Bands for the Mobile-)	
Satellite Service)	
)	
Petition for Rule Making of the Wireless)	RM-9498
Information Networks Forum Concerning the)	
Unlicensed Personal Communications Service)	
)	
Petition for Rule Making of UTStarcom, Inc.,)	RM-10024
Concerning the Unlicensed Personal)	
Communications Service)	

**REPLY TO OPPOSITIONS TO
PETITION FOR RECONSIDERATION**

Pursuant to Section 1.429 of the Commission's rules,¹ the Cellular Telecommunications & Internet Association ("CTIA")² submits this Reply to the Oppositions to CTIA's Petition for

¹ 47 C.F.R. § 1.429 (2003).

² CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

Reconsideration of the FCC's *Third Report and Order*³ in the Mobile Satellite Service ("MSS") proceeding, filed by ICO Global Communications and The Boeing Company.⁴ Both New ICO and Boeing have incorrectly characterized and analyzed CTIA's Petition for Reconsideration. As CTIA stated in its Petition for Reconsideration of the Third Report and Order, the Commission should reallocate all unassigned spectrum, or spectrum from companies that miss their 2 GHz milestones, to services other than MSS.

DISCUSSION

The hyperbole and shrillness that characterize the New ICO and Boeing oppositions to CTIA's Petition for Reconsideration do not obscure the basic fact that they both have incorrectly read and analyzed CTIA's Petition. In particular, contrary to the claim of New ICO, CTIA's Petition addressed a new and novel argument. The Petition for Reconsideration was not of the FCC's Second Memorandum Opinion and Order, which had denied CTIA's previous request to reallocate the *entire* Mobile Satellite Service band. Rather, as the first sentence in CTIA's Petition states, CTIA sought "reconsideration of the Commission's decision in the *Third Report*

³ *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, The Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band, Amendment of the U.S. Table of Frequency Allocations to Designate the 2500-2520/2670-2690 MHz Frequency Bands for the Mobile-Satellite Service, Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service, Petition for Rule Making of UTStarcom, Inc., Concerning the Unlicensed Personal Communications Service*, ET Docket No. 00-258, IB Docket No. 99-81, RM-9911, RM-9498, RM-10024, Third Report and Order and Second Memorandum Opinion and Order, 18 FCC Rcd 2223 (2003) ("Third Report & Order").

⁴ *See ICO Global Communications Opposition to CTIA Petition for Reconsideration*, Third Report and Order, ET Docket No. 00-258 (filed May 15, 2003) ("New ICO Opposition"); *See Opposition and Comments of the Boeing Company*, Third Report and Order, ET Docket No. 00-258 (filed May 15, 2003) ("Boeing Opposition").

and Order,”⁵ focusing on the Commission’s reallocation decision with regard to spectrum recovered from failed MSS licensees.

Contrary to New ICO’s statement, CTIA’s reconsideration petition did not “ask the Commission to justify ‘from the ground up’ an MSS allocation”⁶ CTIA did not challenge the allocation of the 70 MHz of spectrum to Mobile Satellite Services (“MSS”). As stated above, CTIA challenged the Commission’s decision to retain for the benefit of the remaining MSS operators some of the spectrum reclaimed from MSS licensees who had missed milestones. CTIA’s was addressing spectrum that was being reclaimed from MSS licensees who had missed the first, and simplest, of the MSS milestones. CTIA argued that all of the spectrum from missed milestones should be reallocated for other uses.

CTIA focused its arguments on the Commission’s failure to provide justification for retaining *any* reclaimed spectrum for MSS use. CTIA argued that “the Commission articulated no public interest rationale for retaining 40 megahertz of spectrum for MSS [and that] in light of the pervasive evidence regarding the questionable viability of the mobile satellite service industry, the Commission should have taken the opportunity in the *Third Report and Order* to reallocate from MSS to other services all *unassigned* spectrum and all spectrum from companies that have *missed milestones*.”⁷ Both New ICO and Boeing challenge this claim, arguing that the Commission has justified the allocation of 70 MHz of spectrum in previous Commission decisions. However, as stated above, CTIA is not challenging the original allocation in this

⁵ See *CTIA Petition for Reconsideration*, Third Report and Order, at 1-2, (“*CTIA Petition*”) (filed April 14, 2003).

⁶ See *New ICO Opposition* at 8.

⁷ *CTIA Petition* at 3-4 (emphasis added).

reconsideration petition. CTIA was challenging the need to grant additional spectrum to MSS licensees, which was not justified by the Commission.

In defense of the Commission's decision to retain 40 MHz of spectrum, both New ICO and Boeing cite to the Commission's 2000 Service Rules Order. Citing paragraph 17 of the Service Rules Order, New ICO claims that the Commission's decision "expressly held out the possibility that successful systems would receive additional spectrum to the extent that others defaulted."⁸ Citing paragraphs 13 and 35 of the Service Rules Order, Boeing argues that the Commission "set[] a mechanism for systems to increase their amount of authorized spectrum when needed."⁹ What both parties fail to mention is what the Commission stated in paragraph 18, which is the core of CTIA's argument. In that paragraph, the Commission stated,

as explained in the *Notice*, although we are hopeful that all authorized systems will be built, we recognize that this might not occur. Thus, there is a probability that additional spectrum will become available as some authorized systems are not able to implement service. Spectrum abandoned by authorized systems *may* be available for expansion of systems that are *operational* and *require additional spectrum*. ***We do not, however, establish a policy or rule for redistribution of abandoned spectrum here. Instead, we will evaluate whether to redistribute such spectrum or make it available to new entrants after achievement of each of our system implementation milestones.*** We will also consider whether to designate abandoned spectrum for award to operators meeting our unserved area service criterion, described below.¹⁰

⁸ See *New ICO Opposition* at 6.

⁹ See *Boeing Opposition* at 4.

¹⁰ See *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, Report and Order, IB Docket No. 99-81, ¶18 (Rel. Aug. 25, 2000).

CTIA believes that no MSS licensee has satisfied these criteria, and that accordingly, the FCC has not justified reallocation of spectrum to the remaining licensees.

Additionally, the justification for any spectrum allocation or assignment that can be found in the earlier Commission Orders was based on circumstances that are out of date. As a perfect example, in the interim since those Orders, not one 2 GHz licensee is operating commercially, and according to the Commission's recent decision, four of the original eight licensees have missed the first, and simplest, of the milestones.

CONCLUSION

As CTIA stated in its Petition, the Commission's decision to retain 40 MHz of spectrum for MSS is not supported in logic, or in the record. Not one MSS licensee has established a demonstrated need, or a public interest benefit, for additional spectrum. There simply is no justification for dedicating such a large amount of valuable spectrum to remaining MSS licensees, particularly as the number of licensees fall due to missed milestones.

Neither the Opposition of New ICO, nor the Opposition of Boeing, provides support for this outcome. Further, both misread and mis-analyzed CTIA's Petition. Accordingly, for the foregoing reasons, both Oppositions should be rejected, and the Commission should reconsider its MSS reallocation decision and, instead, retain no more than seven megahertz of spectrum in the 2 GHz band for each surviving MSS licensee. All other spectrum in the 2 GHz band should be reallocated to more productive uses.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christine Blomquist, hereby certify that on this 27th day of May 2003, the foregoing Petition for Reconsideration of the Cellular Telecommunications & Internet Association was filed electronically on the FCC's Electronic Comment Filing System and copies were served via first class mail, postage pre-paid, to the following:

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